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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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DEC 29 1997

In the Matter of)

Access Reform Tariff Filings)

All West Communications Inc. - Utah)
Tariff F.C.C. No. 1)

Bay Springs Telephone Company, Inc.)
Tariff F.C.C. No. 2)

Bixby Telephone Company)
Tariff F.C.C. No. 1)

Elkhart Telephone Company)
Tariff F.C.C. No. 1)

Lexington Telephone Company)
Tariff F.C.C. No. 2)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

97-249

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Transmittal No. 4

Transmittal No. 74

Transmittal No. 3

Transmittal No. 52

Transmittal No. 4

**OPPOSITION OF ALL WEST COMMUNICATIONS, INC. - UTAH, BAY SPRINGS
TELEPHONE COMPANY, INC., BIXBY TELEPHONE COMPANY, ELKHART
TELEPHONE COMPANY, AND LEXINGTON TELEPHONE COMPANY
TO PETITION OF AT&T CORP.**

All West Communications, Inc. - Utah (All West), Bay Springs Telephone Company, Inc. (Bay Springs), Bixby Telephone Company (Bixby), Elkhart Telephone Company (Elkhart), and Lexington Telephone Company, (Lexington), pursuant to Section 1.773(b) of the Commission's rules, 47 C.F.R. § 1.773(b), and the Commission's Order in this proceeding,¹ hereby submit their Opposition to the "Petition of AT&T Corp. On Rate-Of-Return LEC Tariff Filings" (AT&T's

¹ Support Material For Carriers to File to Implement Access Charge Reform Effective January 1, 1997, Order, DA 97-2358, (released November 7, 1997).

Petition).

I. Introduction

All West, Bay Springs, Bixby, Elkhart, and Lexington (hereinafter "the Companies") are independent local exchange carriers providing interstate access services in Utah, Mississippi, Oklahoma, Kansas and North Carolina, respectively. They are also Tier 2B companies that have filed interstate access tariffs for their traffic sensitive rates in compliance with Section 61.39 of the Commission's rules, 47 C.F.R. § 61.39, and in accordance with the Commission's decisions in Regulation of Small Telephone Companies, CC Docket No. 86-467, FCC 87-186, 2 FCC Rcd 3811 (released June 29, 1987), modified, Regulation of Small Telephone Companies, CC Docket No. 86-467, DA 88-1408, 3 FCC Rcd 5770 (released September 27, 1988). Under Section 1.773(a)(1)(iii) of the Commission's rules, 47 C.F.R. § 1.773(a)(1)(iii), these interstate access tariffs are considered prima facie lawful and will not be suspended by the Commission absent a substantial showing of a high probability that the tariff rates would be found unlawful after investigation.

The Companies filed the referenced tariffs with the Commission on December 17, 1997. These proposed tariff rates reflect the costs that these small independent local exchange carriers actually incurred and historical minutes-of-use that were actually measured. AT&T served its petition on counsel for the referenced companies on December 23, 1997, after the close of regular business, at approximately 6:25 pm EST asking the Commission to suspend the referenced tariff filings and investigate them on the grounds that the companies filed "...[s]ome, but insufficient, cost supports [sic]."²

The Companies urge the Commission to deny AT&T's Petition and allow their interstate access tariff filings to become effective without suspension or investigation. AT&T has failed to

² AT&T's Petition, Appendix C.

rebut the presumption of lawfulness that attaches to these streamlined tariff filings. The rates proposed by the Companies are reasonable and well-supported by actual costs and historical usage.

II. AT&T Has Failed to Rebut the Presumption of Lawfulness Established by Section 1.773(a)(1)(iii) of the Commission's Rules

The Commission established streamlined tariff review for access tariff filings by Tier 2B companies which choose to use an historical test year. Section 1.773(a)(1)(iii) states in pertinent part:

The filing will be considered prima facie lawful and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

- (A) That there is a high probability the tariff would be found unlawful after investigation;
- (B) That any unreasonable rate would not be corrected in a subsequent filing;
- (C) That irreparable injury will result if the tariff filing is not suspended; and
- (D) That the suspension would not otherwise be contrary to the public interest.

AT&T makes no effort to meet the Commission's test for suspension of the Companies' tariffs. In fact, other than merely listing the Companies in the Appendices of its Petition, AT&T makes no specific reference to any of the Companies nor does it explain what is insufficient about the cost support filed by the Companies. Consequently, AT&T's filing cannot rebut the presumption of lawfulness created by Section 1.773(a)(1)(iii) of the Commission's Rules.

AT&T's petition does not demonstrate that an investigation of the Companies' streamlined filings is warranted at this time. These filings do not, on their face, conflict with any statute or agency regulation or order. AT&T has not demonstrated that there is a high probability that such

tariff rates based on actual historical costs would be found unlawful after investigation.

Irreparable injury will not result if the small company tariffs filed by the Companies are not suspended. The Commission designed the Section 61.39 small company tariff filing procedures to be self-correcting so that any unreasonable rates are corrected in subsequent filings. The Commission stated that "subsequent tariff filings based on historic data can be expected to correct any excessive earnings that may result from changed circumstances."³

Suspension of the small company tariffs filed by the Companies would be contrary to the public interest.⁴ The Commission adopted streamlined tariff regulation for Tier 2B companies to reduce the administrative and regulatory burdens on small telephone companies "in a manner that should ensure reasonable rates."⁵ The suspension and contentious investigation requested by AT&T is unjustified and would contravene the goals underlying Section 61.39 of the Commission's rules.

The Commission's efforts to reduce unnecessary regulatory burdens on smaller carriers would be undermined by suspending these small company tariffs and subjecting them to a contentious investigation. Just the filing of AT&T's Petition has caused many small LECs to bear the legal expenses associated with the preparation of this Opposition: an expense they otherwise would have avoided. The Commission has attempted to develop approaches adequate to assure just and reasonable rates with a minimum of administrative and regulatory burden on Tier 2B local exchange carriers.⁶ In the context of annual access tariff filings, the Commission concluded that:

In developing cost support and other filing requirements for the

³ In re Regulation of Small Telephone Companies, 2 FCC Rcd at 3813, ¶ 18.

⁴ 47 C.F.R. § 1.773(a)(1)(iii)(D).

⁵ In re Regulation of Small Telephone Companies, 2 FCC Rcd at 3815, ¶ 33.

⁶ In re Commission Requirements for Cost Support Material to be Filed with 1993 Annual Access Tariffs, Order, DA 93-192, slip op. at ¶ 9 (released February 18, 1993).

annual access tariffs, this Commission has always sought to recognize the special circumstances of small companies, and to develop approaches adequate to assuring just and reasonable rates with a minimum of administrative burdens. See e.g., Sections 61.39 and 69.3(f) of this Commission's Rules, 47 C.F.R. §§ 61.39 and 69.3(f). In considering the specific requirements of future access tariff filings, including data requirements and waivers in particular cases, we will continue to take account of the special circumstances of small telephone companies.⁷

The Commission has also initiated further proceedings designed to streamline rate regulation of small local exchange carriers to provide simplification, reduce regulatory burdens, and to assure reasonable rates.⁸ The Commission concluded in that proceeding that "one of the more substantial regulatory burdens that many LECs bear is the requirement to make annual tariff filings pursuant to Section 69.3 of the Commission's Rules."⁹ After comparing tariff rates filed pursuant to Section 61.39 of the Commission's Rules to the tariff rates of other local exchange carriers, the Commission concluded that rates based on actual historical costs are consistently lower than rates filed by the National Exchange Carrier Association (NECA) and other carriers using projected costs and demand.¹⁰

III. Conclusion

The suspension and investigation suggested by AT&T of the Access Reform Tariff Filings made by All West, Bay Springs, Bixby, Elkhart, and Lexington is unwarranted and should be denied. The suspension and contentious investigation sought by AT&T would be contrary to the public

⁷ Access Tariff Filing Schedules, CC Docket No. 88-326, FCC 88-283, 3 FCC Rcd 5495, ¶ 27 (released September 14, 1988).

⁸ In re Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Notice of Proposed Rulemaking, 7 FCC Rcd 5023, ¶¶ 3, 35 (released July 17, 1992).

⁹ Id. at 5025, ¶ 10.

¹⁰ Id. at 5028, ¶ 29.

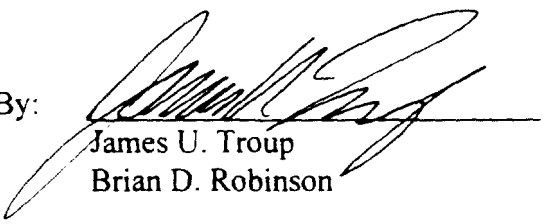
interest because it would undermine the Commission's efforts to reduce administrative and regulatory burdens on small telephone companies. These tariff filings propose local switching rates that are supported by actual historical costs that have already been incurred and minutes-of-use that were actually measured. AT&T has made no substantive argument as to why the cost support supplied by the Companies is insufficient nor has AT&T demonstrated a high probability that these tariffs would be found unlawful, as required by Section 1.773(a)(1)(iii)(A) of the Commission's rules.

WHEREFORE, All West, Bay Springs, Bixby, Elkhart, and Lexington respectfully request that the Commission deny the Petition of AT&T Corp. for suspension and investigation of their Access Charge Reform tariff filings.

Respectfully submitted,

ALL WEST COMMUNICATIONS, INC. - UTAH
BAY SPRINGS TELEPHONE COMPANY, INC.
BIXBY TELEPHONE COMPANY
ELKHART TELEPHONE COMPANY,
AND
LEXINGTON TELEPHONE COMPANY

By:



James U. Troup
Brian D. Robinson

Their Attorneys

Arter & Hadden
1801 K Street, NW
Suite 400K
Washington, DC 20006
(202) 775-7960

December 29, 1997

CERTIFICATE OF SERVICE

I, Tracey Beaver, do hereby certify that on this 29th day of December 1997 I have caused to be served a copy of the foregoing "Opposition of All West Communications, Inc. - Utah, Bay Springs Telephone Company, Inc., Bixby Telephone Company, Elkhart Telephone Company, and Lexington Telephone Company to Petition of AT&T Corp." by hand delivery or facsimile upon the parties listed on the attached service list.


Tracey Beaver

By Facsimile:

Yolanda Brooks

AT&T

Fax (908) 953-6788

By Regular Mail:

Mark C. Rosenblum

Peter H. Jacoby

Judy Sello

Room 3250J1

295 North Maple Avenue

Basking Ridge, New Jersey 07920

By Hand Delivery:

Richard Metzger, Jr.

Chief, Common Carrier Bureau

Federal Communications Commission

1919 M Street, NW

Washington, DC 20554

James D. Schlichting

Chief, Competitive Pricing Division

Federal Communications Commission

1919 M Street, NW

Room 518

Washington, DC 20554

International Transcription Service, Inc.

1919 M Street, NW, Suite 246

Washington, DC 20037